

**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

IN THE MATTER OF:)	BEFORE THE TENNESSEE
)	BOARD OF MEDICAL EXAMINERS
KEN BERRY, M.D.)	
RESPONDENT)	CASE NO.: 2010001991
)	
CAMDEN, TENNESSEE)	
TENNESSEE LICENSE NO.: 35476)	

CONSENT ORDER

Comes now the Division of Health Related Boards of the Tennessee Department of Health ("State"), by and through the Office of General Counsel, and Respondent, Ken Berry, M.D., ("Respondent"), and respectfully moves the Tennessee Board of Medical Examiners ("Board") for approval of this Consent Order affecting Respondent's medical license in the State of Tennessee.

The Board is responsible for the regulation and supervision of medical doctors licensed to practice in the State of Tennessee. TENN. CODE ANN. § 63-6-101, *et seq.* It is the policy of the Board to require strict compliance with the laws of this State, and to apply the laws so as to preserve the quality of medical care provided in Tennessee. It is the duty and responsibility of the Board to enforce the Tennessee Medical Practice Act in such a manner as to promote and protect the public health, safety and welfare in every practicable way, including disciplining medical doctors who violate the provisions of TENN. CODE ANN. § 63-6-101, *et seq.* or the Rules and Regulations promulgated by the Board and recorded in the Official Compilation of Rules and Regulations of the State of Tennessee ("TENN. COMP. R. & REGS.").

The Respondent, by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that

presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against the Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. Respondent understands that by signing this Consent Order, Respondent is allowing the Board to issue its order without further process. In the event that the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

I. STIPULATIONS OF FACT

1. The Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor in the State of Tennessee, having been granted license number 35476 on June 21, 2001.
2. From September 10, 2009 until April 10, 2010, Respondent has advertised in newspapers, as well as his Facebook page, that he utilizes products known as MIC and MIC Ultra.
3. Respondent makes statements regarding the efficacy and superiority of his services and products that he is unable to substantiate.

II. GROUNDS FOR DISCIPLINE

4. The facts stipulated to in the Stipulations of Fact are sufficient to establish that grounds for discipline of Respondent's medical license exist. Specifically, Respondent has

violated the following statutes or rules which are part of the Tennessee Medical Practice Act, TENN. CODE ANN. § 63-6-101, *et seq.* and TENN. COMP. R. & REGS for which disciplinary action before and by the Board is authorized:

5. The facts stipulated in paragraphs 2 and 3, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(8), (9):

- (8) The advertising of medical business in which untrue or misleading statements are made, or causing the publication or circulation of fraudulent advertising relative to any disease, human ailment or conditions;
- (9) Willful violation of the rules and regulations promulgated by the board of medical examiners to regulate advertising by practitioners who are under the jurisdiction of such board.

6. The facts stipulated in paragraphs 2 and 3 *supra*, constitute a violation of Rule 0880-2-13(4)(a), (l) of the TENN. COMP. R. & REGS:

- (4) Advertising Content. The following acts or omissions in the context of advertising by any licensee shall constitute unethical and unprofessional conduct, and subject the licensee to disciplinary action pursuant to T.C.A. §63-6-214(b)(9).
 - (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services personnel, materials or equipments cannot be substantiated;
 - (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.

III. POLICY STATEMENT

The Tennessee Board of Medical Examiners takes the following action in order to protect the health, safety and welfare of the citizens of the State of Tennessee.

IV. ORDER

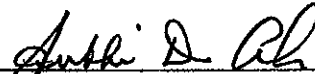
NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

- 1) Respondent's Tennessee Medical License is hereby **REPRIMANDED**.
- 2) Respondent is assessed fifteen (15) type "B" Civil Penalties in the amount of five hundred (\$500.00) dollars for a total of seven thousand five hundred (\$7,500.00) dollars representing fifteen (15) violations of law found in paragraphs 2 and 3.
- 3) Any and all civil penalties shall be paid in full within thirty (30) days of the entry of this Order. Payment shall be made by **certified check, cashier's check, or money order**, payable to the **State of Tennessee, Department of Health**. Any and all payments shall be forwarded to the **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, Heritage Place Metro Center, 227 French Landing, Suite 201, Nashville, Tennessee 37243**. A notation shall be placed on said money order to such check that it is payable for the civil penalties of Ken Berry, M.D., Case No. 2010001991.
- 4) Respondent must pay, pursuant to TENN. CODE ANN. § 63-6-214(k) and Rule 0880-2-.12(1)(j) of the TENN. COMP. R. & REGS., the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Affidavit of Costs prepared and filed by counsel for the Department. Said costs shall not exceed five thousand dollars (\$5,000.00).
- 5) Any and all costs shall be paid in full within thirty (30) days after the issuance of the Affidavit of Costs. Payment shall be made by **certified check, cashier's check, or**

money order, payable to the State of Tennessee, Department of Health. Any and all payments shall be forwarded to the **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, Heritage Place Metro Center, 227 French Landing, Suite 201, Nashville, Tennessee 37243**. A notation shall be placed on said money order to such check that it is payable for the Affidavit of Costs of Ken Berry, M.D., Case No. 2010001991.

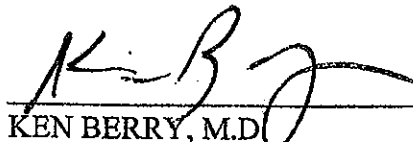
- 6) Respondent understands that this is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank and/or similar agency.

This Consent Order was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 20th day of July, 2010.

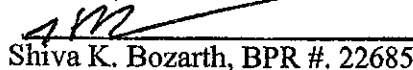


Chairperson
Tennessee Board of Medical Examiners

APPROVED FOR ENTRY:



KEN BERRY, M.D.
30 East Main Street
Camden, TN 38320



Shiva K. Bozarth, BPR #. 22685
Office of General Counsel
Deputy General Counsel
Suite 210
220 Athens Way
Nashville, Tennessee 37243
(615) 741-1611

7-6-2010

DATE

7/11/10


DATE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon the following by delivering same in the United States regular mail and United States certified mail, number 70610600002, return receipt requested, with sufficient postage thereon to reach its destination.
16 875251

Ken Berry, M.D.
30 East Main Street
Camden, TN 38320

This 22nd day of July, 20 10.



Shiva K. Bozarth
Deputy General Counsel